

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORKLUIS TORO, Individually and on Behalf of All  
Others Similarly Situated,

Plaintiff,

-against-

FRAME MY TV.COM, LLC,

Defendant.

<b>USDC SDNY</b> <b>DOCUMENT</b> <b>ELECTRONICALLY FILED</b> <b>DOC #:</b> _____ <b>DATE FILED:</b> 5/23/2024
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23-CV-04863 (MMG)

**ORDER**

MARGARET M. GARNETT, United States District Judge:

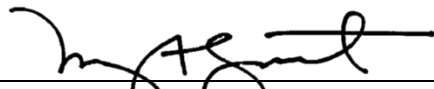
On November 9, 2023, Judge Torres issued a Civil Case Management Plan and Scheduling Order, which set the close of fact discovery for March 8, 2024. On January 8, 2024, Plaintiff served certain interrogatories and document requests on Defendant (the “January 8 Discovery Requests”). *See* Dkt. No. 22 at 1. On March 27, 2024, Plaintiff filed a letter, which stated that Defendant had failed to respond to the January 8 Discovery Requests, other than a belated response to Plaintiff’s request for admissions and entirely untimely initial disclosures; no responsive documents were produced. *See* Dkt. No. 22 at 1. On April 17, 2024, the parties appeared for a conference at which the Court asked counsel for Defendant about the failure to respond to the January 8 Discovery Requests. Counsel for Defendant readily admitted that there was no good excuse for failing to respond but represented that he believed that settlement would be viable if Defendant was given more time to produce material responsive to the January 8 Discovery Requests. Accordingly, the Court ordered Defendant to produce any and all materials responsive to the January 8 Discovery Requests no later than May 8, 2024. Dkt. No. 26. On May 15, 2024, Plaintiff filed a letter notifying the Court that Defendant still had not produced any responsive material and requesting that the Court preclude Defendant from offering any evidence in opposition to summary judgment or at a trial, as well as any other relief the Court finds just and proper. Dkt. No. 27. On May 21, 2024, the Court granted Defendant leave to respond to Plaintiff’s letter no later than May 22, 2024, but indicated that Plaintiff’s request would be treated as unopposed should Defendant fail to file such a letter response. Dkt. No. 28. To date, Defendant has not responded to Plaintiff’s May 21 letter.

Accordingly, pursuant to Rule 37(b)(2)(A) of the Federal Rules of Civil Procedure, it is hereby ORDERED that Defendant is precluded from offering any fact evidence that would have been responsive to the January 8 Discovery Requests, whether in connection with any expert reports or other expert disclosures, in opposition to any summary judgment motion filed by Plaintiff, or at trial. Further, under Rule 37(b)(2)(C), it is hereby ORDERED that Defendant and Defendant’s counsel shall pay the reasonable expenses, including attorney’s fees, incurred by Plaintiff as a result of Defendant’s failure to respond to the January 8 Discovery Requests. It is further ORDERED that, no later than **May 31, 2024**, Plaintiff shall file an affidavit and supporting materials, including an itemized list of costs and expenses, that it believes were incurred by Defendant’s failure to respond to the January 8 Discovery Requests.

All other dates and deadlines, including the close of expert discovery on July 10, 2024, and the briefing schedule for any summary judgment motions, *see* Dkt. No. 26, remain in effect.

Dated: May 23, 2024  
New York, New York

SO ORDERED.

  
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MARGARET M. GARNETT  
United States District Judge